

12-278
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Federal Communications Commission
Consumer & Governmental Affairs Bureau
Washington, D C 20554

CGB

SEP 5 2003

Control No 0302398/aw

The Honorable Charles E. Grassley
United States Senate
135 Hart Senate Office Building
Washington, D C 20515-1501

SEP 11 2003

Dear Senator Grassley

Thank you for your letter on behalf of your constituent, Mr. John Sorensen, regarding the Federal Communications Commission's (Commission) recent amendment to the rules implementing the Telephone Consumer Protection Act of 1991 (TCPA). Specifically, Mr. Sorensen expresses concern that the Commission reversed its prior conclusion that an "established business relationship" constitutes the necessary express permission to send an unsolicited facsimile advertisement. Mr. Sorensen indicates that requiring such express permission to be in writing will place onerous burdens on associations that wish to fax their members.

On September 18, 2002, the Commission released a Notice of Proposed Rulemaking (NPRM) in CG Docket No. 02-278, seeking comment on whether it should change its rules that restrict telemarketing calls and unsolicited fax advertisements, and if so, how. The NPRM sought comment on the option to establish a national do-not-call list, and how such action might be taken in conjunction with the national do-not-call registry rules adopted by the Federal Trade Commission (FTC) and the numerous state do-not-call lists. In addition, the Commission sought comment on the effectiveness of the TCPA's unsolicited facsimile advertisement rules, including the Commission's determination that a prior business relationship between a fax sender and recipient establishes the requisite consent to receive advertisements via fax. The Commission received over 6,000 comments from individuals, businesses, and state governments on the TCPA rules.

The record in this proceeding, along with our own enforcement experience, demonstrated that changes in the current rules are warranted, if consumers and businesses are to continue to receive the privacy protections contemplated by the TCPA. As explained in the Commission's Report and Order released on July 3, 2003, the record indicated that many consumers and businesses receive faxes they believe they have neither solicited nor given their permission to receive. Consumers emphasized that the burden of receiving hundreds of unsolicited faxes was not just limited to the cost of paper and toner, but includes the time spent reading and disposing of faxes, the time the machine is printing an advertisement and is not operational for other purposes, and the intrusiveness of faxes transmitted at inconvenient times, including in the middle of the night.

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As we explained in the Report and Order, the legislative history of the TCPA indicates that one of Congress' primary concerns was to protect the public from bearing the costs of unwanted advertising. Therefore, Congress determined that companies that wish to fax unsolicited advertisements to customers must obtain their express permission to do so before transmitting any faxes to them. The amended rules require all entities that wish to transmit advertisements to a facsimile machine to obtain permission from the recipient in writing.

The Commission's amended facsimile advertising rules were initially scheduled to go into effect on August 25, 2003. However, based on additional comments received since the adoption of the July Report and Order, the Commission, on its own motion, determined to delay the effective date of some of the amended facsimile rules, including the elimination of the established business relationship exemption, until January 1, 2005. The comments filed after the release of the Report and Order indicate that many organizations may need additional time to secure this written permission from individuals and businesses to which they fax advertisements. Enclosed is a copy of the Commission's Order on Reconsideration, released on August 18, 2003.

We appreciate Mr. Sorensen's comments. We have placed a copy of Mr. Sorensen's correspondence in the public record for this proceeding. Please do not hesitate to contact us if you have further questions.

Sincerely,

The image shows a handwritten signature in dark ink, which appears to read "K. Dane Snowden". To the left of the signature, the word "For" is written in a smaller, handwritten font.

K. Dane Snowden

Chief

Consumer & Governmental Affairs Bureau

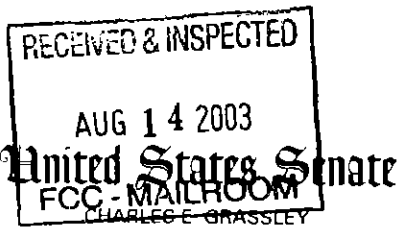
Enclosures

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July 29, 2003

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Ms. Diane Atkinson
Congressional Liaison Specialist
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445 12th Street, SW - Room 8-C453
Washington, D.C. 20554

CEG
RCPA
2398

Dear Ms. Atkinson:

Enclosed please find a communication from John K. Sorensen regarding his concerns about FCC regulations governing unsolicited fax advertisements.

I would appreciate any assistance you could provide pertaining to this matter. Please mark your return correspondence to the attention of Andrew Wenthe when responding to my office.

Thank you for your attention to my request.

Sincerely,

Charles E. Grassley
United States Senator

CEG/aw
Enclosure

14 AUG 2003 RCUD

CHAIRMAN,
FINANCE

Committee Assignments

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JUDICIARY
AGRICULTURE

CHAIRMAN,
INTERNATIONAL NARCOTICS
CONTROL CAUCUS

The Federal Communications Commission (FCC) published new regulations governing unsolicited fax advertisements in the Federal Register on Friday, July 25. The rules are set to go into effect exactly one month from the publication date, on Monday, August 25. These regulations remove the "established business relationship" exception from existing fax regulations. This is absolutely bad for business! It will force associations and other companies to obtain the written consent of their own members, clients and industry partners before transmitting any fax that could be interpreted as commercial in nature.

The new regulations remain subject to speculation in the Association community, regarding exactly which transmissions the FCC would interpret as commercial in nature, whether written consent to a national association would extend to chapter or affiliate faxes, and whether a written consent form would expire with membership, for example.

I urge you to review these harmful regulations and share your views with the FCC. Though well intended, they accomplish little more than to hamper the flow of commerce.

John K. Sorensen
President
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